

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RHETT E. TAYLOR and LAURIE D.  
TAYLOR,

Plaintiffs,

v.

PNC BANK, NATIONAL ASSOCIATION,

Defendant.

CASE NO. C19-1142-JCC

ORDER

This matter comes before the Court on Defendant's motion to dismiss (Dkt. No. 8). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained herein.

**I. BACKGROUND**

Plaintiffs are the record owners of real property located at 6228 165th Pl. SW, Lynnwood, WA 98037-2725 (the "property"). (Dkt. No. 1 at 2.) On March 6, 2007, Plaintiffs borrowed \$150,000 from National City Bank on a home equity line of credit (the "HELOC loan"). (*Id.*) Plaintiffs executed an equity reserve agreement and a deed of trust that was recorded against the property. (*Id.* at 2–3; *see* Dkt. Nos. 1-3 at 2–7, 1-4 at 2–8.) The equity reserve agreement reflected an "open-end line of credit" whose "total amount will be required to be repaid in two hundred forty (240) equal monthly payments . . . ." (Dkt. No. 1-3 at 2, 4.) The deed

1 of trust established a lien against the property and had a maturity date of March 6, 2037. (Dkt.  
2 No. 1-4 at 2–3.) The listed events of default under the deed of trust included fraud, failure to  
3 make a timely payment, and Plaintiffs taking any action or inaction adversely affecting the  
4 property or Defendant’s rights in the property. (*Id.* at 5.) Under the deed of trust, Defendant’s  
5 remedies for an event of default included acceleration of the debt and foreclosure of the property.  
6 (*Id.*) The HELOC loan is currently owned by Defendant and had a balance of \$152,885.47 on  
7 June 11, 2019. (Dkt. No. 1 at 3.)

8 On February 11, 2011, Plaintiffs filed a Chapter 7 bankruptcy petition in the U.S.  
9 Bankruptcy Court for the Western District of Washington. (*Id.*) On May 23, 2011, the  
10 bankruptcy court granted Plaintiffs a discharge pursuant to 11 U.S.C. §§ 727. (*Id.*; see Dkt. No.  
11 1-5 at 2.) On July 23, 2019, Plaintiffs filed their complaint in this action seeking to quiet title to  
12 the property. (Dkt. No. 1.) Plaintiffs contend that Washington’s six-year statute of limitations on  
13 actions to enforce promissory notes and accompanying deeds of trust has run on the HELOC  
14 loan following the bankruptcy court’s discharge in May 2011, and therefore they are entitled to  
15 quiet title against Defendant. (*Id.* at 3–4.) Defendant moves to dismiss Plaintiffs’ complaint for  
16 failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. No. 8.)

## 17 **II. DISCUSSION**

### 18 **A. Motion to Dismiss Legal Standard**

19 The Court may dismiss a complaint that “fail[s] to state a claim upon which relief can be  
20 granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain  
21 sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.  
22 *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility when the plaintiff  
23 pleads factual content that allows the Court to draw the reasonable inference that the defendant is  
24 liable for the misconduct alleged. *Id.* at 678. In addition, the complaint may be dismissed if it  
25 lacks a cognizable legal theory or states insufficient facts to support a cognizable legal theory.  
26 *Zixiang v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013).

1           **B.       Statute of Limitations under Washington Law**

2           Under Washington law, a promissory note and deed of trust are written contracts that are  
3 subject to a six-year statute of limitations. *See* Wash. Rev. Code § 4.16.040(1); *Cedar W.*  
4 *Owners Ass’n v. Nationstar Mortg., LLC*, 434 P.3d 554, 559 (Wash. Ct. App. 2019). An action  
5 “can only be commenced” within six years “after the cause of action has accrued.” Wash. Rev.  
6 Code § 4.16.005. The six-year statute of limitations on a deed of trust accrues “when the party is  
7 entitled to enforce the obligations of the note.” *Wash. Fed., Nat’l Ass’n v. Azure Chelan LLC*,  
8 382 P.3d 20, 30 (Wash. Ct. App. 2016).

9           When a promissory note and deed of trust are payable in installments, the six-year statute  
10 of limitations accrues for each monthly installment from the time it becomes due. *Edmundson v.*  
11 *Bank of America, N.A.*, 378 P.3d 272, 277 (Wash. Ct. App. 2016) (citing *Herzog v. Herzog*, 161  
12 P.2d 142, 145 (Wash. 1945)). In *Edmundson*, the Washington State Court of Appeals ruled that  
13 the six-year statute of limitations period for enforcing a deed of trust payable in installments  
14 begins to accrue on each date that a borrower defaults on a payment until the borrowers’ personal  
15 liability is discharged in a bankruptcy proceeding, as after that point no future installment  
16 payments will be due. 378 P.3d at 278. Washington and federal courts have since followed the  
17 legal rule announced in *Edmundson*. *See Jarvis v. Fed. Nat’l Mortg. Ass’n*, 726 F. App’x 666,  
18 667 (9th Cir. 2018) (“The final six-year period to foreclose runs from the time the final  
19 installment becomes due . . . [which] may occur upon the last installment due before discharge of  
20 the borrower’s personal liability on the associated note”), *aff’ing Jarvis v. Fed. Nat’l Mortg.*  
21 *Ass’n*, Case No. C16-5194-RBL (W.D. Wash. 2017); *U.S. Bank NA v. Kendall*, 2019 WL  
22 2750171, slip op. at 4 (Wash. Ct. App. 2019) (noting that although a deed of trust’s lien is not  
23 discharged in bankruptcy, the limitations period for an enforcement action nonetheless “accrues  
24 and begins to run when the last payment was due” prior to discharge); *Hernandez v. Franklin*  
25 *Credit Mgmt. Corp. et al.*, Case No. C19-0207-JCC, Dkt. No. 14 (W.D. Wash. 2019) (applying  
26 *Edmundson* to conclude that creditors’ ability to enforce the underlying deed of trust became

1 time-barred six years after “the last date an installment payment was due prior to” bankruptcy  
2 discharge).<sup>1</sup>

3 The equity reserve agreement and accompanying deed of trust were installment contracts  
4 requiring Plaintiffs to make monthly payments to service the HELOC loan. (*See* Dkt. Nos. 1-3,  
5 1-4.) Plaintiffs received a Chapter 7 bankruptcy discharge on May 23, 2011. (Dkt. No. 1 at 3.)  
6 Therefore, the statute of limitations on Defendant’s ability to enforce the deed of trust began to  
7 accrue on the last date an installment payment was due prior to the discharge. *See Edmundson*,  
8 378 P.3d at 278.<sup>2</sup> Defendant has not established that it took any actions following the discharge  
9 that could have tolled the six-year statute of limitations under Wash. Rev. Code § 4.16.040(1);  
10 (*see* Dkt. Nos. 8 at 2–3, 12 at 2–3). Therefore, as Plaintiffs’ discharge occurred beyond the six-  
11 year statute of limitations imposed by Wash. Rev. Code § 4.16.040(1), Defendant has not  
12 established that Plaintiffs’ complaint to quiet title in the property fails to state a claim upon  
13 which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6); *Zixiang*, 710 F.3d at 999.

### 14 **III. CONCLUSION**

15 For the foregoing reasons, Defendant’s motion to dismiss (Dkt. No. 8) is DENIED.

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19 <sup>1</sup> Defendant argues that the Court should decline to follow the reasoning in *Edmundson*,  
20 *Jarvis*, and *Kendall* because those “courts’ consideration of the effect of a discharge on a statute  
21 of limitations is incomplete and unpersuasive.” (Dkt. No. 8 at 6.) The Court declines Defendant’s  
invitation to ignore preceding case law, including that of the Ninth Circuit.

22 Defendant also argues that this case is factually distinguishable from *Hernandez* and asks  
23 the Court to reconsider its prior interpretation of *Edmundson*. (*See* Dkt. No. 12 at 2–3, 5–6.)  
Defendant’s attempts to distinguish this case from *Hernandez* are unavailing, and the Court will  
not revisit its prior analysis of *Edmundson*.

24 <sup>2</sup> Neither party has specified when Plaintiffs’ last installment payment prior to the  
25 discharge was due to Defendant. (*See* Dkt. Nos. 1 at 2–3, 8 at 2–3.) However, more than six  
26 years have passed since Plaintiffs’ discharge on May 23, 2011, and thus any installment  
payments due prior to that date must fall outside of the six-year statute of limitations. *See* Wash.  
Rev. Code § 4.16.040(1).

1 DATED this 26th day of September 2019.

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5 John C. Coughenour  
6 UNITED STATES DISTRICT JUDGE  
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